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Khmer Rouge trials

Report of the Secretary-General

Summary

In its resolution 57/228 B, the General Assembly requested the Secretary-General to report to the Assembly at its fifty-eighth session on the implementation of that resolution. In his subsequent reports on the Khmer Rouge trials (A/58/617, A/59/432 and Add.1, A/60/565 and A/62/304), the Secretary-General provided information on the progress achieved towards establishing and operating the Extraordinary Chambers in the Courts of Cambodia, within the Cambodian domestic courts, for the prosecution under Cambodian law of crimes committed during the period of Democratic Kampuchea.

The present report provides details on the progress achieved by the Extraordinary Chambers since the most recent report of the Secretary-General and highlights the challenges faced, in particular the acute financial crisis that could jeopardize the future operations of the Chambers.

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I. Introduction

1. Since the previous reports of the Secretary-General on the Khmer Rouge trials (A/58/617, A/59/432 and Add.1, A/60/565 and A/62/304), the Extraordinary Chambers in the Courts of Cambodia have achieved substantial progress and demonstrated their capacity to conduct highly complex judicial proceedings in accordance with international standards. They have, however, also faced, and indeed continue to face, significant financial and political challenges in their endeavour to fulfil their mandate. The concerns raised in the report of the Secretary-General of 31 March 2003 (A/57/769) with regard to the funding modalities for the Chambers have proved well founded, with the Chambers now facing an acute financial shortfall that could imperil their future operations.

2. During the reporting period, the Extraordinary Chambers concluded all proceedings in case 001 against Kaing Guek Eav, alias "Duch", the former head of S-21, a Khmer Rouge torture and execution centre. Duch was convicted and sentenced to 35 years' imprisonment by the Trial Chamber. Following an appeal, his sentence was increased by the Supreme Court Chamber to that of life imprisonment. The trial in case 002, against four surviving senior leaders of the Khmer Rouge regime, began in June 2011. Many Cambodians and foreigners have attended the judicial proceedings in both cases, with the national and international press reporting on them extensively and positively.

3. Cases 003 and 004 are in the investigation phase. The co-prosecutors have stated publicly that there will be no further cases.

II. Progress made in the cases

A. Case 001: Kaing Guek Eav, alias "Duch"

4. Case 001 was the first case tried before the Extraordinary Chambers. The single accused, Kaing Guek Eav, alias "Duch", was the deputy head of S-21 from 15 August 1975 to March 1976 and the head of S-21 from March 1976 until the collapse of the Democratic Kampuchea regime in January 1979. S-21 was a security centre in Phnom Penh where perceived opponents of the Communist Party of Kampuchea were sent for interrogation, torture and execution.

5. On 8 August 2008, the co-investigating judges issued a closing order in which they indicted Duch for crimes against humanity and grave breaches of the Geneva Conventions of 1949. Following an appeal by the co-prosecutors, the closing order was partially amended by the Pre-Trial Chamber to add the domestic crimes of torture and premeditated murder as defined in the 1956 Penal Code of Cambodia to the indictment. The Pre-Trial Chamber sent the accused for trial on the basis of the amended closing order.

6. The initial hearing before the Trial Chamber was held on 17 and 18 February 2009. The substantive trial hearing began on 30 March and concluded in November. On 26 July 2010, the Trial Chamber convicted Duch of crimes against humanity and grave breaches of the Geneva Conventions of 1949, sentencing him to 35 years' imprisonment. The co-prosecutors, the accused and civil parties appealed against the judgement to the Supreme Court Chamber.

7. On 3 February 2012, the Supreme Court Chamber rendered its decision. It affirmed the conviction for crimes against humanity of persecution and entered additional convictions for crimes against humanity of extermination (encompassing murder), enslavement, imprisonment, torture and other inhumane acts. It quashed the decision of the Trial Chamber to grant a remedy for the violation of the accused's rights occasioned by his illegal detention by a Cambodian military court between 10 May 1999 and 30 July 2007. It granted 10 further civil party applications and affirmed the decision of the Trial Chamber to compile and post on the website of the Extraordinary Chambers all statements of apology and acknowledgements of responsibility made by the accused during his trial and appeal proceedings. Moreover, it dismissed Duch's appeal, in which he had argued that he did not fall within the jurisdiction of the Chambers. Lastly, the Supreme Court Chamber ordered the accused to remain in the custody of the Chambers pending the finalization of arrangements for his transfer, in accordance with the law, to the prison in which his sentence would continue to be served. That decision of the Supreme Court Chamber concluded the judicial activities in the case. In accordance with the Internal Rules, the co-prosecutors requested the enforcement of the remainder of Duch's sentence and that he should remain in the detention facility of the Chambers during the period that he was required to testify in case 002.

8. Case 001 afforded the first opportunity for Cambodians to witness justice being rendered for crimes committed during the period of Democratic Kampuchea (1975-1979), during which some 2 million people died. More than 30,000 Cambodians attended the trial. The case sent a clear signal to the Cambodian people and the international community that impunity for the crimes committed by the Khmer Rouge regime would not be countenanced. The conclusion of the case was a landmark moment for the Extraordinary Chambers and demonstrated their capacity to prosecute complex crimes in accordance with international standards. It paved the way for case 002, which concerns the four most senior surviving leaders of Democratic Kampuchea.

B. Case 002: Nuon Chea, Ieng Sary, Khieu Samphan and Ieng Thirith

9. In January 2010, following an investigation that lasted approximately two and a half years, the co-investigating judges notified the parties that the investigations in case 002 had been concluded and invited them to make any final requests for further investigation. While some requests were granted, others were denied, leading to the submission of appeals to the Pre-Trial Chamber. In July, the Pre-Trial Chamber completed the determination of those appeals. The co-investigating judges forwarded case 002 to the co-prosecutors for their final submission. In August, the co-prosecutors filed the final submission with the co-investigating judges, in which they requested that the charged persons should be indicted and sent for trial.

10. On 15 September 2010, the co-investigating judges issued a closing order in which they indicted Nuon Chea, former Chair of the Democratic Kampuchea National Assembly and Deputy Secretary of the Communist Party of Kampuchea, Khieu Samphan, former Head of State of Democratic Kampuchea, Ieng Sary, former Deputy Prime Minister for Foreign Affairs of Democratic Kampuchea, and Ieng Thirith, former Social Action Minister of Democratic Kampuchea, as members of a joint criminal enterprise for crimes against humanity, grave breaches of the Geneva Conventions of 1949 and genocide against the Cham and Vietnamese ethnic groups

within Cambodia, in addition to offences under the 1956 Penal Code of Cambodia. Following the issuance of the closing order, the parties filed several appeals. On 13 January 2011, the Pre-Trial Chamber issued its decisions with regard to the appeals and sent the case for trial.

11. In response to motions from the defence teams in which they claimed that the accused were unfit to stand trial, and in view of their advanced age, in April 2011, the Trial Chamber appointed a geriatrician to assess three of the four accused. Khieu Samphan chose not to be assessed. The experts found Ieng Sary and Nuon Chea fit to stand trial, a finding that went challenged. From 29 to 31 August, preliminary hearings were held to determine whether Ieng Thirith was fit to stand trial.

12. The trial began with an initial hearing, held from 27 to 30 June 2011. The parties requested that 1,054 fact witnesses, experts and civil parties should testify at the trial. During the initial hearing, the Trial Chamber considered lists of witnesses submitted by the parties and preliminary objections concerning its jurisdiction. On 22 September 2011, it decided to sever the trial into a series of separate cases, each addressing a separate section of the indictment. Each case would have a trial followed by a verdict.

13. On 17 November 2011, the Trial Chamber, following the unanimous assessment of five court-appointed medical experts, determined that Ieng Thirith was suffering from a progressive, degenerative cognitive condition that rendered her unfit to stand trial. The Chamber severed the charges against her from the indictment, stayed the proceedings against her and ordered her unconditional release. The co-prosecutors immediately filed both a request to stay the release order and an appeal against the order. On 13 December, the Supreme Court Chamber set aside the decision of the Trial Chamber and ordered it to request, in consultation with experts, additional treatment for Ieng Thirith to render her competent to stand trial. It also ordered the Trial Chamber to reassess her within six months of the start of that additional treatment.

14. On 21 November 2011, the substantive trial of Nuon Chea, Ieng Sary and Khieu Samphan began with the co-prosecutors' opening statements, which covered the entire indictment. Consistent with the Chamber's decision of 22 September 2011 to sever the trial into a series of separate cases, each with a trial and a verdict, however, the first trial will focus on the forced movement of the population from Phnom Penh and later from other regions (phases 1 and 2) and related crimes against humanity. It will also consider the structure of Democratic Kampuchea, the history of the Communist Party of Kampuchea, the organizational structure of Democratic Kampuchea and the roles of the three accused in relation to the policies of the Democratic Kampuchea regime relevant to all charges, which will provide a foundation for the subsequent trials. In its decision, the Chamber stated that it might expand the scope of the first trial, which it subsequently decided to do following a trial management meeting on 17 August 2012.

15. The first trial is proceeding. To date, more than 50,000 visitors, mostly Cambodians, have attended the proceedings. The trial is widely regarded as the most important criminal prosecution under way in the world today.

C. Cases 003 and 004: five suspects whose identities are confidential

16. The crimes under investigation in cases 003 and 004 are crimes against humanity and violations of the 1956 Penal Code of Cambodia. The investigation in the former case also concerns grave breaches of the Geneva Conventions of 1949. The names of the suspects remain confidential. Officials at the most senior levels of the Government of Cambodia have publicly stated their opposition to both cases. The proceedings before the Extraordinary Chambers have been marked by divisions between the international and national co-prosecutors and between the international and national judges.

17. The co-prosecutors opened preliminary investigations into the cases on 10 July 2006. The international co-prosecutor drafted an introductory submission in which he requested the co-investigating judges to investigate the allegations. Since the national co-prosecutor did not agree that the investigations should proceed, the international co-prosecutor recorded a disagreement on 20 November 2008. On 18 August 2009, the Pre-Trial Chamber rendered its considerations on the disagreement, but was divided along national and international lines, with the national judges considering that the investigations should not proceed and the international judges that they should. That division meant that the supermajority required for a decision to be made (four of five judges) was not obtained. In accordance with article 7 (4) of the Agreement between the United Nations and the Royal Government of Cambodia concerning the Prosecution under Cambodian Law of Crimes Committed during the Period of Democratic Kampuchea, the investigation was therefore to proceed, and the international co-prosecutor's introductory submission was transmitted to the co-investigating judges on 7 September 2009.

18. On 9 June 2010, the co-investigating judges made a public statement in which they announced that, on that same date, the international co-investigating judge had recorded a disagreement between the two judges relating to the timing of the investigations. As a result of the disagreement, only the international co-investigating judge would continue to investigate the cases until the end of 2010.

19. The first international co-investigating judge, Marcel Lemonde (France), resigned as from 30 November 2010 and was replaced by the then reserve international co-investigating judge, Siegfried Blunk (Germany), on 1 December. On 29 April 2011, the co-investigating judges issued a public notification in which they stated that the investigations into case 003 had concluded. That notification sparked widespread criticism from international commentators and members of civil society, who said that it was premature and did not respect the rights of victims to participate in the proceedings. The notification was challenged on 20 May 2011 by the international co-prosecutor, who filed three requests for further investigative actions. The requests were rejected by the co-investigating judges on 7 June on the basis of a procedural technicality. Corrected requests were filed on 10 June in conjunction with an appeal in which the international co-prosecutor challenged the technical basis for the original rejection of the requests. The co-investigating judges rejected the corrected requests on 28 July.

20. The international co-prosecutor filed an appeal against the rejections before the Pre-Trial Chamber on 3 August. Mr. Blunk submitted his resignation as an international co-investigating judge on 9 October, while the appeal was pending,

citing reasons connected with perceived interference in the proceedings by the Government. His resignation took effect on 31 October. The then reserve international co-investigating judge, Laurent Kasper-Ansermet (Switzerland), acted as the international co-investigating judge from 14 November, pending his formal appointment by the Cambodian Supreme Council of the Magistracy.

21. On 15 November, the Pre-Trial Chamber failed to reach the required supermajority of four affirmative votes, being split along national and international lines in relation to the appeal. The decision of the co-investigating judges to reject the requests for investigative actions therefore stood. In a joint separate opinion, the international judges of the Pre-Trial Chamber stated that the co-investigating judges could use their discretion to reconsider their decision to conclude the investigations in case 003.

22. During this period, the national co-investigating judge and the national component of the Extraordinary Chambers refused to recognize the authority of Mr. Kasper-Ansermet to act as the international co-investigating judge in the absence of his formal appointment by the Cambodian Supreme Council of the Magistracy. On 19 January 2012, the Cambodian Supreme Council of the Magistracy decided not to appoint Mr. Kasper-Ansermet as the international co-investigating judge. In response to that decision, on 20 January, the Secretary-General issued a statement referring to article 5 (6) of the Agreement between the United Nations and the Royal Government of Cambodia concerning the Prosecution under Cambodian Law of Crimes Committed during the Period of Democratic Kampuchea, which stated that, in case there was a need to fill the post of the international co-investigating judge, the person appointed to fill that post must be the reserve international co-investigating judge. The Secretary-General concluded that the decision not to appoint Mr. Kasper-Ansermet, who was then the reserve international co-investigating judge, was a breach of that provision of the Agreement, and requested that Cambodia should take immediate steps to appoint him. The Cambodian authorities took no such steps. It is a matter of some concern to the United Nations that the national co-investigating judge and the national co-prosecutor are members of the Cambodian Supreme Council of the Magistracy, the body that took the decision not to appoint Mr. Kasper-Ansermet.

23. While acting as the international co-investigating judge, Mr. Kasper-Ansermet faced impediments to the pursuit of the investigations in cases 003 and 004, which he recorded subsequently in a note to the parties dated 21 March 2012. Those included opposition by the national co-investigating judge to all attempts to move the investigations forward and a refusal by the Cambodian staff of the Office of the Co-Investigating Judges to assist him. Having examined the case files, Mr. Kasper-Ansermet determined that the judicial investigation into case 003 had been defective and decided that it should be resumed. The national co-investigating judge refused to discuss the matter with him and Mr. Kasper-Ansermet referred the disagreement to the Pre-Trial Chamber on 15 December 2011.

24. In relation to case 004, Mr. Kasper-Ansermet sought the agreement of the national co-investigating judge to various investigative actions, but the latter did not respond. Consequently, Mr. Kasper-Ansermet also referred that disagreement to the Pre-Trial Chamber on 19 January 2012.

25. On 3 February, both disagreements were returned by the President of the Pre-Trial Chamber, who stated that the disagreements had not been considered by

the Chamber because of Mr. Kasper-Ansermet's lack of authority. The international judges of the Chamber set out their disagreement with the President in a dissenting opinion on 10 February, stating that the Chamber was required to provide a reasoned consideration of the matter. They went on to state that, in the absence of the appointment of an international co-investigating judge, Mr. Kasper-Ansermet, as the reserve international co-investigating judge, had the authority to perform those functions. A subsequent attempt by Mr. Kasper-Ansermet to file the disagreements with the Chamber was again rejected.

26. Mr. Kasper-Ansermet resigned as from 4 May, citing the above-mentioned impediments to the performance of his duties and describing the environment as hostile.

27. On 20 June, the Supreme Council of the Magistracy appointed Mark Harmon (United States of America) as the international co-investigating judge and Olivier Beauvallet (France) as the reserve international co-investigating judge. Mr. Harmon is expected to take up his functions in Phnom Penh late in September.

III. Public information and outreach

28. In paragraph 22 of the Secretary-General's report of 12 October 2004 (A/59/432), public information and outreach is described as an integral part of the work of the Extraordinary Chambers. The Chambers have made extensive efforts to keep the Cambodian people informed about the judicial process. The proceedings and the high public attendance (more than 150,000 people) have been widely and positively reported in the international press. In case 001, weekly press briefings were provided to the national and international media and more than 180 media outlets covered the opening week of the trial. From January to July 2009, journalists paid 742 visits to the Chambers and 417 journalists covered the five days of closing arguments in November. The closing arguments were broadcast live by all the major television and radio stations in Cambodia.

29. There was intense media coverage of the beginning of the trial phase of case 002 on 27 June 2011. Some 140 media representatives covered the opening statements and there were 10,000 visitors over the three days of the proceedings. The Chambers also launched a weekly radio programme, *Khmer Rouge on Trial*, which featured weekly highlights of the trial proceedings in case 002, in addition to a call-in segment that allowed listeners to ask questions and make comments.

30. Other outreach activities included attendance by officials of the Chambers at conferences, educational tours for the public at the premises of the Chambers, the provision of briefings to various organizations and to visiting officials, participation in radio and television programmes and public outreach forums. Civil party forums are held in numerous geographical locations throughout Cambodia to keep civil parties informed about the proceedings and to provide psychological support.

31. The judgement of the Supreme Court Chamber in case 001 afforded an opportunity to highlight the achievements of the Extraordinary Chambers. The courtroom was filled to its capacity of 950 people to witness the historic judgement, while hundreds of thousands of people watched the proceedings live on national television and listened on the radio.

32. At the beginning of the trial in case 002, more than 10,000 people visited the court, which was filled to capacity for each day of the co-prosecutors' opening statements.

IV. Prosecutors and judges

A. Judges

33. The Extraordinary Chambers have 27 judicial posts, including the co-investigating judges, 15 of whom are Cambodian and 12 international.

34. The Pre-Trial Chamber comprises four Cambodian and three international judges, including one Cambodian reserve judge and one international reserve judge. The Cambodian judges are Prak Kimsan (President), Ney Thol, Huot Vuthy and Pen Pichsaly as the reserve. The international judges are Rowan Downing (Australia), Chang-ho Chung (Republic of Korea) and Steven J. Bwana (United Republic of Tanzania) as the reserve.

35. The Trial Chamber has four Cambodian judges and three international judges, including one Cambodian reserve judge and one international reserve judge. The Cambodian judges are Nil Nonn (President), Ya Sokhan, You Ottara and Thou Mony as the reserve. The international judges are Silvia Cartwright (New Zealand), Jean-Marc Lavergne (France) and Claudia Fenz (Austria) as the reserve.

36. There are five Cambodian judges serving in the Supreme Court Chamber: Kong Srim (President), Som Sereyvuth, Mong Monichariya, Ya Narin and Sin Rith as the reserve. While four international judges should serve in the Supreme Court Chamber, at the time of the submission of the present report, only three positions were encumbered, owing to the resignation of one judge. The international judges are Chandra Nihal Jayasinghe (Sri Lanka), Agnieszka Klonowiecka-Milart (Poland) and Florence Ndepele Mwachande Mumba (Zambia) as the reserve. On 2 July 2012, the President of the Supreme Court Chamber designated Ms. Mumba to sit in place of Motoo Noguchi (Japan), who resigned as from 15 July, and to replace him in all future proceedings pending the formal appointment of a new international judge by the Supreme Council of the Magistracy.

37. The Cambodian and international co-investigating judges are You Bunleng and Mark Harmon (United States), respectively, and the reserves are Thong Ol and Olivier Beauvallet (France).

B. Co-prosecutors

38. The co-prosecutors of the Extraordinary Chambers are Chea Lang (Cambodia) and Andrew Cayley (United Kingdom of Great Britain and Northern Ireland). The reserve co-prosecutors are Chuon Sun Leng (Cambodia) and Nicholas Koumjian (United States).

V. Office of Administration

39. The Office of Administration supports the substantive offices of the Extraordinary Chambers: the Office of the Co-Prosecutors, the Office of the Co-investigating Judges and the Judicial Chambers. It comprises the Office of the Director, the Public Affairs Section, the Court Management Section, the Budget and Finance Section, the Personnel Section, the Information and Communications Technology Section, the General Services Section and the Security and Safety Section.

40. The Office of Administration is a hybrid system, with separate and distinct administrative rules and regulations covering the national Cambodian component and the international United Nations component. The Acting Director of the Office reports to the Government of Cambodia, while the Deputy Director reports to the United Nations. They collaboratively manage the diverse sections under their authority.

41. Since the previous report of the Secretary-General (A/62/304), significant achievements have been made in enabling the Extraordinary Chambers to conduct large trials involving interpretation and transcription in the three working languages (English, French and Khmer), state-of-the-art audiovisual aids and translation of thousands of pages of documentary evidence. The Court Management Section acts as a central support unit in the coordination of proceedings. It is the official records repository of the Extraordinary Chambers and the processing point for all electronic and hard-copy filings, case files, audiovisual records and evidence. It also coordinates the preparation and management of courtroom proceedings, provides interpretation, translation and transcription services, is responsible for liaison with the detention facility, provides witness and expert support and manages audiovisual operations.

42. Physical improvements have been made to the detention facility, in particular to the cells, in order to improve overall standards in the light of the advanced age of the detainees. In addition, three chairlifts have been installed so that the detainees can enter and leave the courtroom.

VI. Other institutional arrangements

A. Independent Counsellor

43. Allegations of corruption at the Extraordinary Chambers surfaced in 2007 and 2008. They concerned an institutionalized kickback scheme on the Cambodian side of the administration of the Extraordinary Chambers, whereby Cambodian staff were allegedly asked to pay a portion of their salaries to senior officials. Inquiries by the Special Expert of the Secretary-General early in 2008 revealed sufficient substantiation of the allegations for the United Nations to decide that urgent action was needed. The issue was addressed at a senior level with the Government of Cambodia, in particular through negotiations for an effective anti-corruption mechanism at the Extraordinary Chambers, in addition to the existing structure of national and international ethics monitors.

44. While the United Nations initially argued for a formal written complaints procedure, concerns about confidentiality and fears of retaliation against complainants led to a less formal mechanism that was based on the availability to staff of an independent and trusted figure to whom they could take their concerns orally and confidentially. The negotiations culminated in the conclusion of an agreement to establish an independent counsellor in August 2009, and the subsequent appointment of Uth Chhorn, Auditor General of Cambodia, as the Independent Counsellor. He is responsible for treating all matters brought to him confidentially and for ensuring that there is no retaliation against staff for good-faith reporting of wrongdoing. He issues an annual report to the Government of Cambodia and the United Nations, while maintaining the confidentiality of individual complaints.

45. Should concerns arise that the Independent Counsellor deems appropriate to raise to the political level, he can bring them to the attention of the Deputy Prime Minister of Cambodia and the Assistant Secretary-General for Legal Affairs. It would then fall to those officials to resolve the matter through consultations. No such referrals have taken place to date.

B. Special Expert

46. In early 2008, in the light of concerns about the budget proposal of the Extraordinary Chambers, in addition to the need to strengthen the management and administration of the international component of the Chambers, the Secretary-General designated a special expert to advise on the United Nations Assistance to the Khmer Rouge Trials (UNAKRT) and, in particular, to assist in formulating the 2008 and 2009 proposed budget around an indicative schedule and anticipated timelines.

47. The role of the Special Expert has since evolved to encompass the following responsibilities: developing strategies to ensure adequate financing until the completion of the work of the Extraordinary Chambers, including through fundraising efforts; having regular high-level contact with the Government of Cambodia, as necessary, to maintain an open dialogue on issues of concern; monitoring the effectiveness of the Independent Counsellor function; assisting UNAKRT to tackle governance challenges in the structure of the Chambers; and assisting UNAKRT, in consultation with all relevant parties, in taking forward a completion process for the Chambers. The Special Expert visits Phnom Penh regularly and works closely with the Department for Economic and Social Affairs, the Office of the Controller and the Office of Legal Affairs. David Scheffer, the former United States Ambassador-at-Large for War Crimes Issues, was designated as the Special Expert in January 2012.

VII. Challenges

48. As anticipated by the Secretary-General in his report of 31 March 2003 (A/57/769), the Extraordinary Chambers have faced fundamental challenges. Tackling these challenges effectively has proved to be problematic given the decision-making structure within the Chambers and the oversight arrangements. Unlike the other United Nations and United Nations-assisted tribunals, the

international judges of the Chambers do not comprise a majority in any Chamber and there is neither a president nor a registrar. There is also no equivalent of the close oversight and decision-making exercised by the management committees of the other voluntarily funded tribunals. Given that the Chambers are part of the national court structure of Cambodia, and that the United Nations plays an assistance role through UNAKRT, the Secretariat has no managerial or administrative authority over the entire court. The United Nations has had to address the challenges set out herein even without decisive judicial, managerial and administrative authority.

A. Oversight

49. In 2008, following a recommendation by the Board of Auditors and a proposal from a group of interested Member States, a steering committee for UNAKRT was established in New York to monitor the progress of the Extraordinary Chambers and to provide guidance on non-judicial court-related matters. It comprises representatives of the permanent missions to the United Nations of six of the principal donors (Australia, France, Germany, Japan, the United Kingdom and the United States) and Cambodia. The Controller and representatives of the Office of Legal Affairs and the Department of Economic and Social Affairs advise and support the steering committee, which meets once or twice per year. Its main responsibilities are to review the implementation of the workplan of the Chambers, monitor progress and provide strategic guidance when required; review budgetary requirements before submission to the group of interested States; brief the group on outcomes of the steering committee meetings; and assist the Chambers in their fundraising initiatives and advocacy efforts. A subset of the steering committee consisting only of the donors, otherwise known as the principal donors group, meets more frequently, but informally, to discuss budget and administrative matters and emerging operational issues on which the Secretary-General requires donor views and feedback.

50. The group of interested States is the wider group of States that provides financial support to the Extraordinary Chambers, contributing to their international or national components. In Phnom Penh, a broader group of donor States and the European Union meets as the "Friends of the Extraordinary Chambers". Japan and France act as the chairs of the meetings on a rotational basis. The Director of Administration of the Chambers and the Coordinator of UNAKRT are ex officio members. The meetings generally take place twice a year to discuss the progress made by the Chambers and funding challenges. The friends also meet during visits of the Special Expert to be briefed on emerging issues relating to the activities of the Chambers, in particular the progress in the various cases. In 2012, the Special Expert's interventions with the friends centred on the dire funding situation of the Chambers and the possible consequences should funding for the United Nations international component be exhausted.

51. Unlike the management committees of the other voluntarily funded United Nations-assisted tribunals, the steering committee has no decision-making authority. Rather, its meetings and those of the principal donors group act primarily as forums for discussion and to provide guidance and input into the Secretariat's decision-making processes.

B. Governance structure

52. The lack of a strong decision-making structure within the Extraordinary Chambers has compounded the difficulties in managing them. Each Chamber has a national judge as its President. The absence of an overall president who represents the Court as a whole, with broad decision-making authority over both the national and international components, and of a registrar, with overall administrative and budgetary authority, undermines the coherent management of the judicial and administrative organization of the Chambers. There have been unresolved disparate views from within the Chambers, for example, on the question of whether the Supreme Court Chamber should sit full-time or part-time.

53. The Extraordinary Chambers therefore do not benefit from the same internal governance structure that exists in other United Nations and United Nations-assisted tribunals. Each of those tribunals has an internal coordination committee, through which the President, the Prosecutor and the Registrar discuss managerial, administrative and budgetary matters, so as to give guidance and direction, both within the tribunal, and, as appropriate, to United Nations Headquarters and the relevant management committee. While a similar process was attempted in the case of the Extraordinary Chambers within the international component of the United Nations, calling for coordination meetings of the Deputy Director, the international co-prosecutor and one Trial Chamber official, the meetings were discontinued owing to concerns raised by the defence teams.

C. Allegations of political interference

54. Public statements of opposition at the most senior levels of the Government of Cambodia with regard to cases 003 and 004, in addition to the numerous difficulties faced in making progress in the investigation of the two cases, have led to allegations of political interference in the judicial process and lack of cooperation by the Cambodian component of the Extraordinary Chambers.

55. Continuing concerns on the part of the General Assembly about the rule of law and the functioning of the judiciary in Cambodia resulting from interference by the executive were raised in the 2003 report of the Secretary-General (A/57/769). The Secretary-General advised that the most effective way to address that problem would be to provide for a majority of international judges, both in the Trial Chamber and the Appeal Chamber, but that advice was not heeded by the General Assembly or by the principal donors in the face of strong opposition from the Cambodian authorities. Consequently, the co-prosecutors, the co-investigating judges and the Pre-Trial Chamber have faced difficulties in moving cases 003 and 004 forward. The judicial decision-making process within the Chambers has not, in practice, enabled an effective and straightforward resolution of differences of approach between the national and international judges. The Secretariat has found it necessary, from time to time, to appeal for full cooperation and to make representations at a senior level to the Government of Cambodia to refrain from making public statements of opposition to cases 003 and 004.

D. Funding

56. In paragraph 74 of his report of 2003 (A/57/769), the Secretary-General advised that an operation of the nature of the Extraordinary Chambers, mandated by Member States, would constitute an expense of the Organization under Article 17 of the Charter of the United Nations and should be financed from assessed contributions, given that a financial mechanism based on voluntary contributions would not provide the assured and continuous source of funding that would be needed. He further stated that the operation of a court should not be left to the vagaries of voluntary contributions. Nevertheless, in its resolution 57/228 B, the General Assembly decided that the expenses of the Extraordinary Chambers to be defrayed by the United Nations should be borne by voluntary contributions from the international community. The international component of the Chambers is now facing an acute financial shortfall that could jeopardize future operations.

57. At the time of their establishment, it was estimated that the Extraordinary Chambers would complete their work within three years from the time at which the Office of the Co-Prosecutors began operations. That initial timeline was underestimated. The complex dimensions of running a trilingual hybrid court, coupled with the numerous challenges noted above, have resulted in a revised timeline that shows that the activities of the Chambers will continue beyond 2015. With the work on cases 003 and 004 resuming, it remains premature to determine with any certainty a definitive end date. As such, it is also impossible to determine the total financial support needed to complete the overall programme of work of the Chambers.

58. At the request of the group of interested States, a biennial budgeting cycle was instituted with effect from the biennium 2008-2009, with the aim of better defining and monitoring the programme of work of the Extraordinary Chambers and to facilitate fundraising efforts. The expenditures incurred by the Chambers from their inception in 2005 until 31 December 2011 total $141 million, of which $107.9 million was incurred by the United Nations international component and $33.1 million by the Cambodian national component (see annex I to the present report).

59. The expenditures of the international component were fully met from voluntary contributions by the donor community, with the amount of $116.08 million contributed as at 31 December 2011. The expenditures of the national component were met through contributions from the Government of Cambodia and the donor community, in the amount of $32.9 million as at 31 December 2011.

60. On 1 March 2012, the chair of the steering committee announced the formal endorsement of the budget for the biennium 2012-2013 in the total amount of $84.8 million, divided into $64.8 million, exclusive of contingency, for the international component and $20.0 million for the national component.

61. For the first time since the establishment of the Extraordinary Chambers, insufficient funds have been provided and pledges made to cover the endorsed budget. While intensive fundraising efforts by the Special Expert have resulted in a limited number of new commitments, these will be insufficient to meet the financial requirements of the international component. At the time of submission of the present report, the international component had received $17.5 million, against projected expenditures in 2012 of $25.0 million, and 93 per cent of the budget for 2013 was unfunded. Unless new funding is received in September 2012, the United

Nations will have insufficient funds to pay United Nations judges and staff and to meet other commitments under the Agreement in October. In such circumstances, the United Nations can neither predict nor control the consequences for the Chambers and the judicial proceedings before them. This is an unprecedented situation that places the United Nations in a precarious situation, without guidance from Member States on measures that should be implemented if sufficient funding is not secured.

62. The lack of funding has already harmed the ability of UNAKRT to appoint new staff and to extend the contracts of existing staff. Late in 2011, and in 2012, contract extensions were issued on a monthly basis, placing staff in an unfavourable situation. In addition, a recruitment freeze was instituted in July 2012, given that the Organization was without the means to enter into and meet additional commitments. The low morale of staff, including judicial officials, is adversely affecting the effective functioning of the Extraordinary Chambers and the uncertainties regarding financial stability are adding to the already difficult challenges set out above. A recent mission to UNAKRT by the Staff Counsellor's Office confirmed that the continuing financial constraints that affected staff contracts and extensions were a factor within the Chambers that was detrimental to the mental health and psychological well-being of the staff. It also independently confirmed the increasingly low morale of UNAKRT staff, who showed continuing signs of tension and anxiety.

63. At the time of submission of the present report, the Extraordinary Chambers were preparing a revised budget estimate for the biennium 2012-2013, in line with the recommendations of the principal donors group to scale back and institute austerity measures. The revised estimates are expected to reduce the annual requirements for the international component from $32.0 million to $26.6 million. While the Chambers are taking remedial measures to minimize costs in line with donors' suggestions, it remains unclear whether these measures will result in donors' meeting their commitment to fund the 2013 budget fully.

64. As noted earlier, in his report (A/57/769), the Secretary-General recommended funding through assessed contributions, given that a financial mechanism based on voluntary contributions would not provide the assured and continuous source of funding that would be needed to provide a secure basis for the conduct of investigations, prosecutions and trials. He had previously highlighted, in relation to the establishment of the Special Court for Sierra Leone (S/2000/915), that it was anomalous that the parties that entered into an agreement to establish a court on the basis of voluntary funding (the United Nations and the State concerned) were, in practice, dependent for the implementation of their treaty obligations on States that were not parties to the agreement. This is the anomalous position in which the United Nations now finds itself.

65. The General Assembly, in its resolution 57/228 B, mandated the Secretary-General to conclude the Agreement between the United Nations and the Royal Government of Cambodia concerning the Prosecution under Cambodian Law of Crimes Committed during the Period of Democratic Kampuchea. By doing so, the United Nations entered into obligations under international law to finance various aspects of the Extraordinary Chambers, including the salaries of the international judges, the international co-prosecutor and the international staff, the remuneration of defence counsel, the costs of witnesses' travel to the Chambers and the costs of

the utilities and services required by the Chambers. The ability of the United Nations to meet these obligations depends entirely on there being sufficient voluntary contributions from States. In the absence of such contributions, the United Nations can neither predict nor control the consequences for the Chambers and the judicial proceedings before them.

VIII. Conclusions

66. The Secretary-General welcomes the significant progress made by the Extraordinary Chambers since his previous report, in 2007, but, as set out above, notes that there have been serious challenges during the reporting period, and that the international component is facing an acute funding shortfall that could jeopardize the future operations of the Chambers.

67. The completion of the trial and appeal proceedings in case 001 was an historic success for the Chambers and demonstrated their capacity to conduct complex judicial proceedings in accordance with international standards. This success continues with the trial proceedings in case 002.

68. Serious allegations about corruption on the Cambodian side of the administration of the Chambers were dealt with through the conclusion of an agreement on an independent counsellor in 2009. Challenges posed by public statements by senior members of the Government of Cambodia, and allegations of lack of cooperation by the Cambodian component of the Chambers in the investigation in cases 003 and 004, have required significant time and attention on the part of senior officials of the United Nations and will need to be dealt with in order for the success of the Chambers to continue. The imminent arrival of the new international co-investigating judge presents a fresh opportunity for renewed cooperation and genuine progress in the investigation of these cases.

69. In the current world economic crisis, raising funds for the Chambers continues to pose a serious challenge and the acute financial shortfall on the international side of the Chambers raises sustainability concerns. The uncertainty regarding the financial stability of the international component imperils the future operations of the Chambers. Should funds prove insufficient for the United Nations to meet its obligations under the Agreement, it is impossible to predict or control the consequences for the Chambers and the judicial proceedings before them. The financial situation has resulted in public and media attention shifting away from the achievements of the Chambers to issues of financial stability and internal morale.

70. Urgent and substantial financial contributions are required if the future operations of the Chambers are to be assured and the unpredictable consequences of a lack of funds avoided. To put the judicial proceedings before the Chambers in jeopardy for lack of funds would run counter to the message of "no impunity" that the Secretary-General has consistently underlined and that has been progressively strengthened through nearly two decades of United Nations and United Nations-assisted criminal tribunals.

IX. Action to be taken by the General Assembly

71. The General Assembly may wish to take note of the present report, in particular the acute financial shortfall on the international side of the Extraordinary Chambers, which could jeopardize the judicial proceedings before the Chambers, and urgently consider how to enable the United Nations to continue providing essential substantive and logistical support to the Chambers.

Annex

Financial status of the Extraordinary Chambers in the Courts of Cambodia

International component: United Nations Assistance to the Khmer Rouge Trials

Financial status of the Chambers as at 31 December 2011

(United States dollars)

A. Income	
Contributions received from 2005 to 2011	111 215 335
Interest earned from 2005 to 2011	4 867 870
Subtotal	**116 083 205**
B. Expenditure	107 871 036
Fund balance	**8 212 169**[a]

[a] Inclusive of a contingency reserve of $4,198,722.

Financial status of the Chambers as at 31 July 2012

(United States dollars)

A. Income	
Cash balance brought forward as at 1 January 2012	8 212 169
Contributions received from 1 January to 31 July 2012	9 326 539
Subtotal	**17 538 708**
B. Expenditure	14 897 804
Cash balance	**2 640 904**
C. Estimated expenditure from August to December 2012	10 113 807
Projected shortfall	**(7 472 903)**
D. Outstanding pledges for 2012	2 469 045[b]
Projected shortfall as at 31 December 2012	**(5 003 858)**
E. Estimated requirements for 2013	28 237 600[c]
F. Outstanding pledges for 2013	2 055 800
Estimated shortfall for 2013	**(26 181 800)**

[b] Pledges have been made by Australia (1,469,045 in local currency revalued as at 23 August 2012) and Norway (1 million in local currency revalued as at 23 August 2012).

[c] Based on revised projected estimates.

United Nations Assistance to the Khmer Rouge Trials: current and projected expenditure for 2012[d]

(United States dollars)

Description	*2012 approved budget*	*January-July expenditure*	*August-December estimated expenditure*	*Total expenditure*	*Implementation (percentage)*	*Remaining budget*
Posts	19 886 161	9 195 918	6 919 854	16 115 772	81	3 770 389
Non-staff compensation	2 057 004	1 193 550	935 622	2 129 172	104	(72 168)
Other staff costs	193 156	102 023	55 349	157 372	81	35 784
Consultants and experts	1 788 669	755 528	412 706	1 168 234	65	620 435
Witness costs	119 990	19 764	16 020	35 784	30	84 206
Travel	177 908	42 768	49 757	92 525	52	85 383
Contractual services	1 505 425	1 047 740	199 026	1 246 766	83	258 659
Defence support section	4 757 313	1 625 456	1 067 220	2 692 676	57	2 064 637
Civil party co-lead lawyer section	414 090	287 205	126 885	414 090	100	–
Judicial meetings	159 102	33 470	33 470	66 940	42	92 162
Training	29 272	5 854	5 904	11 758	40	17 514
General operating expenses	802 122	382 840	185 170	568 010	71	234 112
Supplies	397 457	152 350	40 878	193 228	49	204 229
Furniture and equipment	663 270	53 336	65 948	119 284	18	543 986
Total	**32 950 939**	**14 897 804**	**10 113 807**	**25 011 611**	**76**	**7 939 328**

[d] Inclusive of programme support costs and exclusive of contingency.

United Nations Assistance to the Khmer Rouge Trials: budget implementation and projected expenditure for the period 2005-2013

(Thousands of United States dollars)

Component	*Budget 2005-2007*	*Expenditure 2005-2006*	*Expenditure 2007*	*Implementation rate (percentage)*	*Budget*		*Expenditure 2008*	*Expenditure 2009*	*Implementation rate (percentage)*
					2008	*2009*			
Judicial Office	9 453	1 258	3 209	47	7 677	8 287	5 027	6 029	69
Defence and victims support	6 017	203	757	16	3 514	3 085	2 546	2 318	74
Office of Administration	27 580	6 016	7 840	50	18 807	18 015	12 960	13 992	73
Total	**43 049**	**7 476**	**11 805**	**45**	**29 997**	**29 387**	**20 534**	**22 338**	**72**

Component	*Budget[e]*		*Expenditure 2010*	*Expenditure 2011*	*Implementation rate (percentage)*	*Budget[f]*		*Estimated expenditures 2012*	*Implementation rate (percentage)*
	2010	*2011*				*2012*	*2013*		
Judicial Office	7 043	9 241	6 829	6 594	82	9 191	7 478	7 196	78
Defence and victims support	2 021	4 660	1 998	2 653	70	6 257	7 110	3 680	59
Office of Administration	14 297	16 933	13 978	13 666	89	17 503	17 254	14 135	81
Total	**23 360**	**30 835**	**22 805**	**22 913**	**84**	**32 951**	**31 841**	**25 012**	**76**

[e] Revised budget estimates.

[f] Revised budget estimates currently under preparation.

National component: Cambodia

Financial status of the Chambers as at 31 December 2011

(United States dollars)

A. Income: contributions received from 2005 to 2011	32 890 646
B. Expenditure	33 149 284
Fund balance	**(258 638)**

Financial status of the Chambers as at 31 July 2012

(United States dollars)

A. Income	
Cash balance brought forward as at 1 January 2012	(258 638)
Contributions received from 1 January to 31 July 2012	7 717 711
Exceeds transfer from Government of Cambodia for 2013	(550 000)
Subtotal	**6 909 073**
B. Expenditure	5 223 532
Cash balance	**1 685 541**
C. Estimated expenditure from August to December 2012	4 243 844
Projected shortfall	**(2 558 303)**
D. Outstanding pledges for 2012	596 504[g]
Projected shortfall as at 31 December 2012	**(1 961 799)**
E. Estimated requirements for 2013	9 451 500[h]
F. Outstanding pledges for 2013	2 559 812[i]
Estimated shortfall for 2013	**(6 891 688)**

[g] Pledges have been made by Germany ($288,973), Japan ($307,531) and the European Union. The agreement for the European Union pledge of 1.3 million euros has not yet been signed. The funds are allocated for both 2012 and 2013. The exact funding amount allocated for each year is not yet known.

[h] Based on revised projected estimates.

[i] Of the pledged amount of $1.8 million for 2013, $550,000 has already been transferred.

National: current and projected expenditure for 2012 [1]

(United States dollars)

Description	*2012 approved budget*	*January-July expenditure*	*August-December estimated expenditure*	*Total expenditure*	*Implementation (percentage)*	*Remaining budget*
Posts	5 787 725	2 959 980	2 455 979	5 415 959	94	371 766
Non-staff compensation	993 174	552 476	412 614	965 090	97	28 084
Judicial meeting	30 764	–	16 221	16 221	53	14 543
Resident judge	129 822	71 908	54 225	126 133	97	3 689
Other staff costs	279 912	100 012	179 900	279 912	100	–
Premises alteration	115 100	64 452	50 648	115 100	100	–
Contractual services	1 276 976	908 827	368 149	1 276 976	100	–
Travel	149 515	31 484	81 328	112 812	75	36 703
Training and meeting costs	221 621	156 129	11 468	167 597	76	54 024
Operating expenses	526 584	326 547	200 037	526 584	100	–
Hospitality	38 100	23 790	14 310	38 100	100	–
Consultant and expert	200 016	27 927	172 089	200 016	100	–
Subtotal	**9 749 309**	**5 223 532**	**4 016 968**	**9 240 500**	**95**	**508 809**
Legacy/residual component	492 490	–	226 876	226 876	46	265 614
Total	**10 241 799**	**5 223 532**	**4 243 844**	**9 467 376**	**92**	**774 423**

[1] Inclusive of programme support costs and exclusive of contingency.

National: budget implementation and projected expenditure for the period 2006-2013

(Thousands of United States dollars)

Component	*Budget 2006-2007*	*Expenditure 2006*	*Expenditure 2007*	*Implementation rate (percentage)*	*Budget*		*Expenditure 2008*	*Expenditure 2009*	*Implementation rate (percentage)*
					2008	*2009*			
Judicial Office	2 425	260	906	48	1 727	1 910	1 431	1 753	87
Defence and victims support	353	4	4	2	172	312	58	178	49
Office of Administration	10 477	1 423	2 781	40	4 417	4 761	3 376	3 997	80
Total	**13 256**	**1 687**	**3 691**	**41**	**6 317**	**6 984**	**4 864**	**5 928**	**81**

Component	*Budget*[a]		*Expenditure 2010*	*Expenditure 2011*	*Implementation rate (percentage)*	*Budget*[b]		*Estimated expenditure 2012*	*Implementation rate (percentage)*
	2010	*2011*				*2012*	*2013*		
Judicial Office	1 966	2 484	1 966	2 367	95	2 291	1 861	2 144	94
Defence and victims support	500	708	500	599	85	881	467	831	94
Office of Administration	5 441	6 666	5 441	6 105	92	6 577	6 992	6 265	95
Subtotal	**7 907**	**9 858**	**7 907**	**9 072**	**92**	**9 749**	**9 320**	**9 241**	**95**
Legacy/residual component	–	–	–	–	–	493	413	227	46
Total	**7 907**	**9 858**	**7 907**	**9 072**	**92**	**10 242**	**9 733**	**9 467**	**92**

[a] Revised budget requirements.

[b] Revised budget currently under preparation.